

**MORRISON | FOERSTER**

250 WEST 55TH STREET  
NEW YORK, NY 10019-9601  
  
TELEPHONE: 212.468.8000  
FACSIMILE: 212.468.7900  
  
WWW.MOFO.COM

MORRISON & FOERSTER LLP  
BEIJING, BERLIN, BRUSSELS, DENVER,  
HONG KONG, LONDON, LOS ANGELES,  
NEW YORK, NORTHERN VIRGINIA,  
PALO ALTO, SACRAMENTO, SAN DIEGO,  
SAN FRANCISCO, SHANGHAI, SINGAPORE,  
TOKYO, WASHINGTON, D.C.

July 7, 2016

Writer's Direct Contact  
+1 (212) 336.4328  
JWishnew@mofo.com

By E-Mail & Overnight Delivery

Hon. Martin Glenn, USBJ  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: In re Residential Capital, LLC et al.  
United States Bankruptcy Court  
Southern District of New York  
Jointly Administered Under Case No. 12-12020 (MG)

Dear Judge Glenn:

This firm is counsel to the ResCap Borrower Claims Trust (the "Trust").

Notwithstanding the close of fact discovery on April 30, 2016, on June 30, 2016, Laird Heal ("Mr. Heal"), counsel for the claimant Rhonda Gosselin ("Ms. Gosselin") filed a letter (the "Letter") with the Court requesting the Court to allow further discovery regarding an alleged payment made by GMACM to Richard Chaisson. At the request of the Court, the Trust is responding to the Letter.

Although neither acknowledged nor addressed by Mr. Heal in the Letter, Mr. Heal in fact is requesting the Court to reconsider its prior *Memorandum Opinion and Order Sustaining in Part and Overruling in Part the ResCap Borrower Claims Trust's Objection to Claim Number 3862 Filed by Rhonda Gosselin* [Docket No. 8516] (the "Order"), entered on April 21, 2015. In the Order, the Court determined that Ms. Gosselin had not demonstrated that the TILA disclosure she received at the origination of her loan was inaccurate. See Order at 28. Rather, the Court overruled the Objection to her claim under the Massachusetts Consumer Credit Cost Disclosure Act on the narrow issue of whether Ms. Gosselin had received a notice of right to cancel more than three days prior to exercising her right to rescind. See id.

The Order stated that an evidentiary hearing was necessary to determine that narrow factual issue, among others. As a result, the Court entered a case management order to govern

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discovery on the limited factual issues specified in the Order. An amended case management order was stipulated to after Mr. Heal returned to the case following a previous absence. See Memorandum Endorsed So Ordered Letter signed on March 17, 2016 re: Extension of Deadlines for the Completion of Discovery [Docket No. 9754] (the “Amended Case Management Order”). Pursuant to the Amended Case Management Order, discovery on the factual issues identified in the Order proceeded, and has now concluded. Also pursuant to the Amended Case Management Order, the Trust and Ms. Gosselin submitted a joint pre-trial order, which the Court entered on June 29, 2016 [Docket No. 9959] (the “Pre-Trial Order”). Pursuant to the Pre-Trial Order, a trial on this matter has been scheduled for September 15, 2016.

Mr. Heal now asks the Court to reconsider the Order and expand the factual issues to be addressed at trial. Such a request is untimely and inappropriate under the Federal Rules of Bankruptcy Procedure.

Federal Rule of Bankruptcy Procedure 9024 states that Federal Rule of Civil Procedure 60 will apply to cases under the Bankruptcy Code, except in certain circumstances not applicable here. See Fed. R. Bankr. P. 9024. Federal Rule of Civil Procedure 60 allows a party to move for relief from a judgment or order for the following reasons: (1) “mistake, inadvertence, surprise, or excusable neglect”; (2) newly discovered evidence...; (3) fraud..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, discharged..., or it is ‘no longer equitable’; or (6) “any other reason that justifies relief.” See Fed. R. Civ. P. 60(b). “A motion for reconsideration ‘is generally not favored and is properly granted only upon a showing of exceptional circumstances.’” In re Residential Capital, LLC, 528 B.R. 570, 573 (Bankr. S.D.N.Y. 2014) (quoting Marrero Pichardo v. Ashcroft, 374 F.3d 46, 55 (2d Cir. 2004)). Here, while not specified in the Letter, it appears that Ms. Gosselin is relying on reason (2) as her basis for reconsideration.

The information allegedly received from Mr. Chaisson is not the type of newly discovered evidence for which relief can be granted upon a motion for reconsideration, because such evidence could have been discovered “with reasonable diligence” prior to the Order being entered. See Webb v. City of New York, No. 08-CV-5145 (CVA), 2011 WL 5825690, at \*1 (S.D.N.Y. Nov. 17, 2011) (“[T]o the extent that a motion for reconsideration relies on new evidence, the movant must demonstrate that the newly discovered evidence could not have been discovered ‘with reasonable diligence’ prior to the court’s ruling.” (citation and internal quotations omitted)). Here, there was nothing to prevent Ms. Gosselin from contacting Mr. Chaisson in the five year period between the initiation of the adversary proceeding in her bankruptcy case (which is formed the basis for her proof of claim) and the entry of the Order. Therefore, Ms. Gosselin has not provided a valid basis for granting the relief.

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Even if the relief requested met the requirements of Rule 60(b), the reconsideration request was not timely made and therefore cannot be granted. “A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c). Thus, in order to seek reconsideration based on purportedly new evidence, Ms. Gosselin needed to seek reconsideration of the Order within a reasonable time.<sup>1</sup> More than a year has passed since the Order was entered, and therefore the request for reconsideration is not timely. Ill. Dep’t of Revenue v. U.S. Energy Biogas Corp. (In re U.S. Energy Sys., Inc.), No. 12-CV-7107, 2013 WL 5204010, at \*4 (S.D.N.Y. Sept. 16, 2013) (“The statutory deadline for filing a motion for relief pursuant to Rule 60(b) is dependent upon the substantive basis for the motion. If the motion is made for reasons (1), (2) or (3) enumerated [in Rule 60(b)], it must be filed no later than one year after entry of the judgment or order or the date of the proceeding from which relief is sought....”); Hoti Enters, L.P. v. GECMC 2007 C-1 Burnett St., LLC (In re Hoti Enters., L.P.), No. 12-CV-5341 (CS), 2012 WL 6720378, at \*4 (S.D.N.Y. Dec. 27, 2012) (upholding bankruptcy court’s determination that one-year limitation applied to claims under Rule 60(d)(1) where the grounds for reconsideration falls within the grounds stated in Rule 60(b)(1)-(3)).

Even if Ms. Gosselin were to assert a basis for relief other than the reasons described in Rule 60(b)(1)-(3), the request is still untimely because it was not made within a “reasonable time” as required by Rule 60(c). As noted above, the parties have already completed discovery on this matter, negotiated a joint pre-trial order, and the matter is scheduled for trial. To reopen discovery into a new factual matter at this juncture would impose an unjustified burden on the Trust and would likely delay the trial. Furthermore, as discussed above, Ms. Gosselin has not identified her reasons for the delay in talking with Mr. Chaisson or why she could not have met with him during the period designated for discovery in the Amended Case Management Order.

In any event, the relief requested by Ms. Gosselin should not be granted because she has not alleged how the purportedly new information would alter the Court’s analysis in the Order. All that has been alleged in the Letter is that Mr. Chaisson purportedly received a payment as a result of the origination of Ms. Gosselin’s loan. However, there is nothing to suggest that this payment was charged to Ms. Gosselin. No such fee is listed on her HUD-1 Settlement Statement (a copy of which was attached to the Declaration of Deanna Horst in support of

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<sup>1</sup> Rule 9024 of the Federal Rules of Bankruptcy Procedure states that the one-year limitation does not apply to a request to reconsider an order disallowing or allowing a claim against the estate entered “without a contest.” Here, the Order was entered after the Trust objected to Ms. Gosselin’s proof of claim and Ms. Gosselin responded to said objection, and therefore this exception is not applicable. See Pleasant v. TLC Liquidating Trust (In re Tender Loving Care Health Servs., Inc.), 562 F. 3d 158, 162 (2d Cir. 2009) (holding that where a claim is objected to, a decision regarding the allowance of the claim is not entered “without a contest” and the one-year limitation on reconsideration applies).

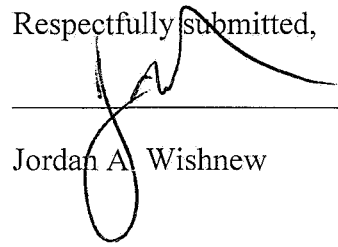
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the objection and is attached hereto as Exhibit 1 for the Court's convenience), and Ms. Gosselin has not alleged that she made any payment to Mr. Chaisson outside of her loan transaction. Because Regulation Z defines a finance charge as "any charge payable directly or indirectly by the consumer..." see 12 C.F.R. § 226.4 (West 2010), a purported payment made by GMACM to a third party that was not charged to Ms. Gosselin would not constitute a "finance charge." Rather, such a payment would be considered a charge "absorbed by the creditor as a cost of doing business" and therefore would not need to be disclosed to Ms. Gosselin. See Comptroller of Currency, Administrator of Banks, Truth in Lending Act, Comptroller's Handbook, December 2010, p. 215-217, et. seq., a copy of which was attached to the objection and is attached hereto as Exhibit 2 for the Court's convenience). Thus, in addition to being untimely and failing to state a ground for reconsideration, the relief requested in the Letter should also be denied on the grounds that it has no effect on this Court's prior decision.

Therefore, the Trust respectfully requests that the Court deny the relief requested in the Letter.

Respectfully submitted,



Jordan A. Wishnew

**Exhibit 1**

L. Settlement Charges				Settlement Statement Page 2	
700. Total Sales/Broker's Commission based on price \$ 4				Settlement Statement Page 2 of 2	
Division of Commission (line 700) as follows:				Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
701.	to				
702.	to				
703.	Commission paid at Settlement				
704.					
800. Items Payable in Connection With Loan					
801.	Loan Origination Fee	1.00 %	GMAC Mortgage Corporation	850.00	
802.	Loan Discount	1.00 %	GMAC Mortgage Corporation	850.00	
803.	Appraisal Fee to Robert Salvon Associates		POC 450.00		
804.	Credit Report to GMAC Mortgage \$ 4.35 total		POC 6.50	(2.15)	
805.	Lender's Inspection Fee				
806.	Mortgage Insurance Application Fee				
807.	Assumption Fee				
808.	Flood Certification to Home Connect Land			19.00	
809.	Tax Service Fee to Home Connects			85.00	
810.	underwriting loan review fee to GMAC Mortgage			195.00	
811.	Processing fee to GMAC Mortgage			95.00	
812.	Lender's document prep to GMAC Mortgage			295.00	
813.					
814.					
815.					
900. Items Required By Lender To Be Paid In Advance					
901.	Interest from	07/31/2006 to 07/31/2006	@ 17.17 / day	17.17	
902.	Mortgage Insurance Premium for	mo. to			
903.	Hazard Insurance Premium for	yrs. to			
904.		yrs. to			
1000. Reserves Deposited With Lender					
1001.	Hazard Insurance	months @	per month		
1002.	Mortgage Insurance	months @	per month		
1003.	City property taxes	5 months @	171.37 per month	856.85	
1004.		months @	per month		
1005.		months @	per month		
1006.		months @	per month		
1007.		months @	per month		
1008.	Aggregate Adjustment			0.00	
1100. Title Charges					
1101.	Settlement or closing fee to				
1102.	Abstract or title search to				
1103.	Title examination to				
1104.	Title insurance binder to				
1105.	Document preparation to				
1106.	Notary fees to				
1107.	Attorney's fees to Marjorie Dunn			525.00	
	(includes above item Numbers: 1101-1107)		)		
1108.	Title insurance to First American Title Insurance Company			212.50	
	(includes above item Numbers: 1109)		)		
1109.	Lender's coverage 85,000.00	Loan Premium: \$212.50			
1110.	Owner's coverage				
1111.					
1112.	Declaration of Homestead to Registry of Deeds			35.00	
1113.	Title Agent Commission \$148.75 70%				
1200. Government Recording and Transfer Charges					
1201.	Recording fees: Deed	; Mortgage 175.00	; Releases	175.00	
1202.	City/county tax stamps: Deed	; Mortgage			
1203.	State tax/stamps: Deed	; Mortgage			
1204.					
1300. Additional Settlement Charges					
1301.	Survey to				
1302.	wire fee to PeoplesBank			10.00	
1303.	overnight mail for payoff/return packet to Postmaster			40.00	
1304.	final inspection fee to Robert Salvon Associates			75.00	
1305.	document delivery fee to Marjorie Dunn			55.00	
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				\$4,388.37	\$0.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement (pages 1 and 2).

Borrowers

  
 Rhonda L. Gosselin

Sellers

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

  
 Marjorie B. Dunn, Esquire

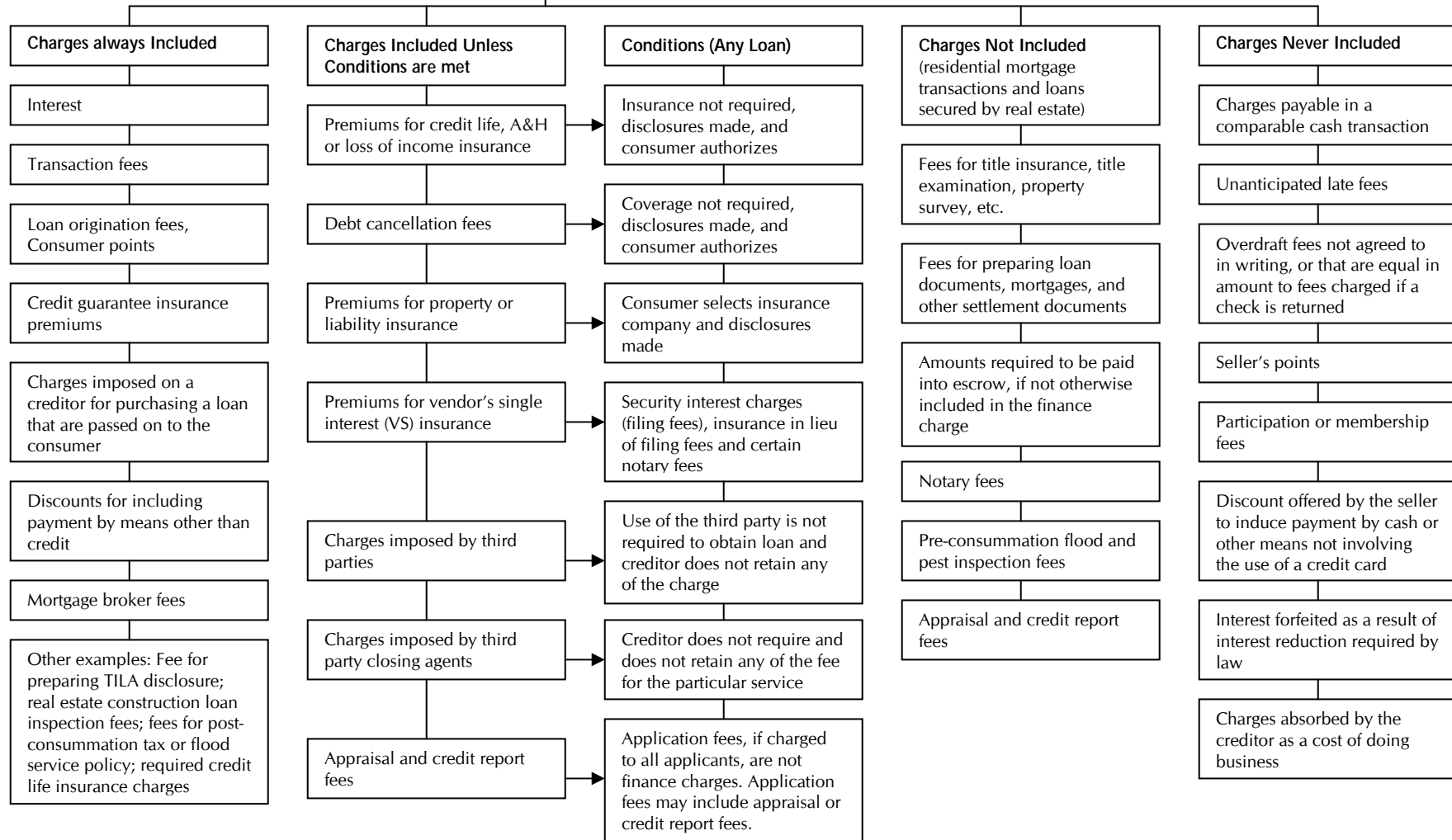
Date 07/26/2006

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

**Exhibit 2**

# Finance Charge Chart

**Finance Charge = Dollar Cost of Consumer Credit:** It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.





## Instructions for the Finance Charge Chart

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party or to the extent the creditor retains a portion of the charge. Charges imposed on the consumer by a settlement agent are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge or to the extent the creditor retains a portion of the charge. Immediately below the finance charge definition, the chart presents five captions applicable to determining if a loan-related charge is a finance charge.

The first caption is “charges always included.” This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

The second caption, “charges included unless conditions are met,” focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, “conditions,” focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor’s option, third party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of an application fee that is charged to all applicants is optional.

The fourth caption, “charges not included,” identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a vacant lot or commercial real estate secures a consumer loan, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, “charges never included,” lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

**Note:** In the first column for the charges always included, transaction fees refer to transaction fees imposed in connection with the credit feature. In the third column for conditions, the condition for both the premiums for credit life, A&H, or loss of income and debt cancellation fees must include affirmative consumer authority. Finally, in the last column of charges never included, over limit fees can be considered as an excludable charge.